

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

DAVID PAUL HAMMER,

Defendant.

CRIMINAL ACTION  
NO. 4:96-CR-0239

**FINAL VERDICT FORM FOR THE PENALTY PHASE**

**Section I — Defendant's Age**

Did the government prove beyond a reasonable doubt that Defendant was 18 years of age or older at the time of Mr. Marti's death?

YES

NO

BY THE COURT:

Dated: July 17, 2014

*Joel Slomsky*  
JOEL H. SLOMSKY, J.

**Section II — Intent**

Did the government prove beyond a reasonable doubt that Defendant intentionally killed Andrew Marti?

YES ✓

NO \_\_\_\_\_

BY THE COURT:

Dated: July 17, 2014

*Joel Slomsky*  
JOEL H. SLOMSKY, J.

**Section III — Statutory Aggravating Factors**

1. Did the government prove beyond a reasonable doubt that Defendant has been previously convicted of one or more State or Federal offenses punishable for a term of imprisonment of more than one year, involving the use, or attempted or threatened use, of a firearm?

YES  \_\_\_\_\_ NO \_\_\_\_\_

2. Did the government prove beyond a reasonable doubt that Defendant committed the murder of Mr. Marti after substantial planning and premeditation?

YES  \_\_\_\_\_ NO \_\_\_\_\_

BY THE COURT:

Dated: July 17, 2014

*Joel Slomsky*  
JOEL H. SLOMSKY, J.

**Section IV — Non-Statutory Aggravating Factors**

1. Did the government prove beyond a reasonable doubt that Defendant would pose a continuing and serious threat to the lives and safety of other persons by committing acts of violence in the future if sentenced to life without the possibility of parole?

YES \_\_\_\_\_ NO

2. Did the government prove beyond a reasonable doubt that Defendant caused injury and loss to the victim, Andrew Marti, and his family?

YES  NO \_\_\_\_\_

BY THE COURT:

Dated: July 17, 2014

  
JOEL H. SLOMSKY, J.

**Section V — Statutory Mitigating Factors**

The Court finds the following mitigating factors to have been proven by a preponderance of the evidence:

1. Defendant's capacity to appreciate the wrongfulness of Defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether his capacity was so impaired as to constitute a defense to the charge,

YES  \_\_\_\_\_ NO \_\_\_\_\_

2. Defendant committed the offense under severe mental or emotional disturbance, regardless of whether the disturbance was of such a degree as to constitute a defense to the charge.

YES  \_\_\_\_\_ NO \_\_\_\_\_

**Section VI — Non-Statutory Mitigating Factors**

The Court finds the following mitigating factors have been proven by a preponderance of the evidence:

**A. ACCEPTANCE OF RESPONSIBILITY AND/OR REMORESEFULLNESS**

1. Defendant is remorseful for having caused the death of Andrew Marti.

YES  \_\_\_\_\_ NO \_\_\_\_\_

2. Defendant has accepted responsibility for causing the death of Andrew Marti.

YES  \_\_\_\_\_ NO \_\_\_\_\_

**B. EXTENDED FAMILY HISTORY OF DYSFUNCTION, ABUSE, AND/OR MENTAL ILLNESS**

3. There is a history of poverty, physical or sexual abuse, child neglect, infidelity, and mental illness in Defendant's extended family, which had a negative impact on Defendant.

YES  NO

**C. DYSFUNCTIONAL AND/OR ABUSIVE UPBRINGING**

4. Defendant's family experienced periods of extreme poverty, including times during which his parents struggled to provide adequate food and housing.

YES  NO

5. Defendant's family often lived in cars or substandard homes without plumbing, electricity, or basic needs.

YES  NO

6. Defendant's family moved frequently from place to place throughout his childhood to find work or because they could not pay the rent.

YES  NO

7. Because of the frequent moves and his parents' neglect, Defendant and his siblings attended multiple different schools, over twenty in Defendant's case.

YES  NO

8. The disruptive educational opportunities left Defendant socially isolated and prevented him from developing close friendships, school mentors, or other positive community relationships.

YES  NO

9. Throughout his developmental and adolescent years, Defendant did not have stability and predictability in his life.

YES  \_\_\_\_\_ NO \_\_\_\_\_

10. Defendant had no positive adult role model in his life for any meaningful period of time.

YES  \_\_\_\_\_ NO \_\_\_\_\_

11. When he was a child, Defendant's parents forced him and his siblings to commit scams and thefts for money.

YES  \_\_\_\_\_ NO \_\_\_\_\_

12. Defendant's mother beat Defendant with her hands or fists and other items, such as a switch, extension cord, broom, or ashtrays.

YES  \_\_\_\_\_ NO \_\_\_\_\_

13. Defendant was raised in a household in which incest and sexual abuse were prevalent.

YES  \_\_\_\_\_ NO \_\_\_\_\_

14. Defendant was raised in a household where physical abuse was unpredictable and commonplace.

YES  \_\_\_\_\_ NO \_\_\_\_\_

15. Defendant suffered sexual abuse beginning from as early as age 5 and extending into his adolescence.

YES  \_\_\_\_\_ NO \_\_\_\_\_

16. Defendant's mother would dress him up in girl's clothes and makeup. Defendant tolerated this demeaning behavior because it was one of the few times his mother showed him any affection. This negatively affected Defendant.

YES  \_\_\_\_\_ NO \_\_\_\_\_

17. Beginning when he was a young boy, Defendant's mother forced Defendant to engage in sexual acts on her.

YES  \_\_\_\_\_ NO \_\_\_\_\_

18. Defendant's mother anally raped Defendant over a period of years with enemas containing hot water and/or Tobasco sauce and other irritants and told him she was "burning the evil out of him."

YES  \_\_\_\_\_ NO \_\_\_\_\_

19. Defendant felt he had to do what his mother forced him to do in order to obtain her love.

YES  \_\_\_\_\_ NO \_\_\_\_\_

20. Defendant's father forced Defendant to have sexual contact, including sexual intercourse, with his sister.

YES  \_\_\_\_\_ NO \_\_\_\_\_

21. Defendant and his brother witnessed his father raping his sister, Diana.

YES  \_\_\_\_\_ NO \_\_\_\_\_

22. Martin Hammer, the brother of Defendant, witnessed his father forcing Defendant and Diana to have sex and when he told his mother about it, she did nothing and angrily denied the abuse.

YES  \_\_\_\_\_ NO \_\_\_\_\_



23. As a young boy, Defendant was sexually abused by his Uncle Albert.

YES  NO

24. While spending summers living out of the family car at Lake Cobb, Defendant was sexually victimized by an older man, Ray Sheridan.

YES  NO

**D. MENTAL, EMOTIONAL, AND/OR COGNITIVE IMPAIRMENTS**

25. Defendant struggled with symptoms of depression and anxiety as a child.

YES  NO

26. The history of severe physical, emotional, and sexual abuse impaired Defendant's capacity to regulate his mood and develop healthy relationships.

YES  NO

27. Defendant suffered overwhelming guilt, self-hatred, and/or hopelessness as a result of the abuse inflicted on him by his parents and/or caretakers.

YES  NO

28. Defendant's history of drug abuse and addiction, starting by the age of 14, was a form of self-medication to cope with the overwhelming pain, anxiety, and/or depression arising from his childhood abuse and neglect.

YES  NO

29. Between 1974, when Defendant was sixteen years old, and 1996, Defendant had been prescribed at least six different anti-psychotic medications, medication for depression, mood stabilization, and anxiety.

YES  NO

30. After he was no longer living with his parents, Defendant sought and received outpatient mental health treatment at seventeen years of age.

YES  NO

31. In 1976, Defendant was diagnosed as suffering from Borderline Schizophrenia, a diagnosis that was later re-classified as Borderline Personality Disorder.

YES  NO

32. Defendant currently suffers from, and at the time of the offense suffered from, Borderline Personality Disorder.

YES  NO

33. Defendant's Borderline Personality Disorder is characterized by an unstable personality structure and/or self-image, instability in interpersonal relationships, moodiness, agitation, depression, and marked impulsivity.

YES  NO

34. Defendant suffers from Cognitive Disorder Not Otherwise Specified.

YES  NO

35. The damage to Defendant's brain is consistent with organic causes.

YES  NO

36. Defendant's cognitive deficits are located on the right side of his brain spanning the frontal, parietal, and/or temporal lobes.

YES  NO

37. Defendant's cognitive deficits impact impulsivity and judgment, and exacerbate the impulse control problems brought on by his Borderline Personality Disorder.

YES  NO

38. Defendant suffers from, and at the time of the offense suffered from, Major Depressive Disorder.

YES  NO

39. Defendant suffers from, and at the time of the offense suffered from, Posttraumatic Stress Disorder.

YES  NO

40. Consistent with his diagnosis of Posttraumatic Stress Disorder, Defendant has suffered from impulsivity, anger control problems, difficulty concentrating, and/or hypervigilance.

YES  NO

41. At the time of the offense, Defendant suffered from a major mental disease or defect, regardless of whether his capacity was so impaired as to constitute a defense to the charge.

YES  NO

**E. MENTAL HEALTH TREATMENT AND PRISON CONDITIONS**

42. Unaccompanied by either parent or an adult, Defendant first sought mental health treatment at the age of fourteen.

YES  NO

43. Although the treating psychologist, Dr. Arlene Schaffer, found that Defendant's problems were serious and required treatment, Defendant's parents failed to follow through on mental health counseling recommended for Defendant when he was fourteen years old.

YES  NO

44. During the time Defendant was incarcerated in the Oklahoma State Penitentiary, the physical conditions in which Defendant lived were abysmal, and Defendant was adversely affected by those deficiencies.

YES  NO

45. During the time Defendant was incarcerated in the Oklahoma State Penitentiary, the mental health treatment was constitutionally inadequate and Defendant was adversely affected by those deficiencies.

YES  NO

46. Prior to Mr. Marti's death, USP-Allenwood housed roughly 1,100 inmates with a mental health staff consisting of two full-time staff psychologists and one contract psychiatrist, who was available only once a month, which adversely affected Defendant.

YES  NO

47. At the time he arrived at USP-Allenwood, Defendant was suffering from mental illness, including Intermittent Explosive Disorder with periods of rage.

YES  NO

48. BOP records reflect that Defendant was having difficulty controlling his anger and impulsivity.

YES  NO

49. On March 20, 1996, the contract psychiatrist prescribed for Defendant 250 mg of Depakote to be taken daily which Defendant stopped taking prior to the murder and this may have adversely affected Defendant.

YES  NO

**F. IF SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE,  
ASSESSMENT OF WHETHER DAVID HAMMER WOULD BE A FUTURE  
DANGER TO STAFF, INMATES, OR THE COMMUNITY**

50. Defendant has a number of serious, chronic medical illnesses and his health has been deteriorating steadily for many years.

YES  NO

51. Defendant has Diabetes mellitus, type II, diabetic polyneuropathy, diabetic retinopathy, and/or diabetic macular edema.

YES  NO

52. Defendant has severe coronary atherosclerosis disease and hyperlipidemia.

YES  NO

53. Defendant has degenerative disc disease, nerve pain, neuralgia, and/or sciatica.

YES  NO

54. As a result of his diabetic neuropathy, Defendant's balance and gait are impaired.

YES  NO

55. As a result of his diabetic macular edema and/or his retinopathy, Defendant's eyesight is deteriorating.

YES  NO

56. Even if Defendant were to follow all doctor recommendations and take all medications, his condition would not improve.

YES  NO

57. The Bureau of Prisons has classified Defendant as a medical "CARE level 3" (of four possible levels), which means he is considered by the BOP to be fragile.

YES  NO

58. The Bureau of Prisons presently considers Defendant's potential for harm to others to be low.

YES  \_\_\_\_\_ NO \_\_\_\_\_

59. Since April 13, 1996, Defendant has not engaged in any serious violence while in prison.

YES  \_\_\_\_\_ NO \_\_\_\_\_

60. Although he has been transported from USP-Terre Haute to other institutions and medical facilities numerous times since April 13, 1996, Defendant has made no attempt to escape and/or cause harm to correctional officers or the community during these transports.

YES  \_\_\_\_\_ NO \_\_\_\_\_

61. Defendant was classified as out of cell status "TWO staff cover" in July of 2004 and he is currently designated as "ONE staff cover."

YES  \_\_\_\_\_ NO \_\_\_\_\_

62. If a sentence of life imprisonment without parole is imposed, Defendant will be housed in a high security Federal prison.

YES  \_\_\_\_\_ NO \_\_\_\_\_

63. The Bureau of Prisons is capable of providing conditions of confinement that would make it unlikely for Defendant to commit acts of violence in the future.

YES  \_\_\_\_\_ NO \_\_\_\_\_

**G. RELATIONSHIPS, GOOD WORKS, AND SELF IMPROVEMENT**

64. Defendant is an important person to his brother, Martin, his son Scott, his uncle, Ron, his aunts Betty and Lynda, and his cousin Kathy, and his family loves him.

YES  NO

65. Defendant is an important person to Sister Camille, and she loves him.

YES  NO

66. Defendant's family and friends will suffer grief and loss if he is executed.

YES  NO

67. Defendant's assistance with fundraising provided financial contributions to the Mercy Center in Brooklyn, New York, Mercy Home in Brooklyn, New York, Hour Children in Long Island City, New York, Gibault School in Terre Haute, Indiana, Ryves Hall Youth Center in Terre Haute, Indiana, Providence Food Bank in Terre Haute, Indiana, Woods Day Care at St. Mary-of-the-Woods in Indiana, Miracle Place in Indianapolis, Indiana, the Alpha Boys Home in Jamaica and/or St. John Bosco Boy's Home in Jamaica.

YES  NO

68. Defendant's assistance with fundraising provided financial contributions to St. Bartholomew Friends of Haiti that has helped children and families in Haiti, including Luckner Mompont, Francilo Cherubin, and Jenny Philemond.

YES  NO

69. Defendant's assistance with fundraising resulted in financial contributions to the Mercy Medical Mission that provides medical assistance for children in developing countries including Haiti, Peru, Guyana, and Kenya.

YES  NO

70. Defendant has sent written communications to at-risk children counseling them against engaging in criminal conduct.

YES  NO

71. Defendant participates in spiritual/religious counseling with his spiritual advisor and Defendant has displayed genuine spiritual growth since 1998.

YES  NO

72. While incarcerated, Defendant obtained his GED.

YES  NO

73. While housed at USP-Terre Haute, Defendant has enrolled in and successfully passed educational and recreational programs he was eligible to take.

YES  NO



**Additional Mitigating Factors Found by a Preponderance of the Evidence:**

The Court finds multiple circumstances that, taken together, warrant a sentence of life imprisonment without the possibility of parole, including Defendant's acceptance of responsibility and remorsefulness; his extended family history of dysfunction, abuse, and mental illness; his dysfunctional and abusive upbringing; his mental, emotional, and cognitive impairments; his mental health treatment and prison conditions, and his relationships, good works, and self-improvement.

BY THE COURT:

Dated: July 17, 2014

  
JOEL H. SLOMSKY, J.

**Section VI — Determination of the Sentence**

Based upon consideration of whether the statutory and/or non-statutory aggravating factors which were found to have been proven beyond a reasonable doubt sufficiently outweigh mitigating factors found to have been proven by a preponderance of the evidence, the Court finds that the appropriate sentence shall be:

Life Without the Possibility of Parole  
 Death

BY THE COURT:

Dated: July 17, 2014

*Joel Slomsky*  
JOEL H. SLOMSKY, J.

**Section VII — Certification**

The Court certifies that race, color, religious beliefs, national origin, or sex of the defendant or the victim was not a consideration in reaching the sentencing determination and that the Court would have made the same sentencing determination regardless of the race, color, religious beliefs, national origin, or sex of the defendant or the victim.

BY THE COURT:

Dated: July 17, 2014

  
JOEL H. SLOMSKY, J.